



Office of the Attorney General
State of Texas

September 28, 1992

DAN MORALES
ATTORNEY GENERAL

Ms. Georgia D. Flint
Commissioner
Texas Department of Insurance
333 Guadalupe Street
P. O. Box 149104
Austin, Texas 78714-9104

OR92-575

Dear Commissioner Flint:

The Texas Department of Insurance received a written request for information pertaining to examinations of several named insurance companies conducted by the agency.¹ The department claims that these items of information are excepted from required public disclosure by section 3(a)(12) of the Texas Open Records Act, V.T.C.S. article 6252-17a. In addition, the department argues that some of the information is excepted by section 3(a)(1) of the act in conjunction with various provisions of the Insurance Code.

Section 3(a)(1) of the Open Records Act excepts from public disclosure "information deemed confidential by law, either Constitutional, statutory, or by

¹Specifically, the requestor sought access to information concerning (1) the dates of all examinations of the companies occurring in the last ten years; (2) the results of the examinations and the recommendations of the examiners; (3) quarterly, monthly, or other "less-than-annual" reports submitted on behalf of the companies since January 1987; and (4) reports prepared by agency staff regarding the companies in connection with the "Early Warning System" since January 1987.

The department has supplied the requestor with information corresponding to the first item of information. The department in its letter states that it considers annual statements of insurance companies public information. The State Board of Insurance recently adopted a rule authorizing public access to final reports of financial examinations of insurance companies issued on or after December 31, 1990. To the extent any of the requested examination reports were prepared on or after this date, they are available to the requestor. Because examination reports of insurance companies may be withheld pursuant to section 3(a)(12) of the Open Records Act, *see* Open Records Decision No. 158 (1977), access to final examination reports prepared prior to December 31, 1990, must be obtained in consultation with the department.

judicial decision." The department invokes section 3(a)(1) in conjunction with various provisions of the Insurance Code. One such provision is article 1.18, which requires an examiner appointed by the board to take and file an oath stating, among other things, "that he will not reveal the condition of, nor any information secured in the course of any examination of any corporation, firm, or person examined by him, to anyone" except the members of the State Board of Insurance, their authorized representative, or when required as witness in an administrative hearing before the Board or the Commissioner of Insurance or in court. Open Records Decision No. 158 (1977) determined that this provision did not make information confidential for purposes of section 3(a)(1).

Article 1.19 of the Insurance Code grants the Board of Insurance Commissioners access to the books, papers, offices, and agents of insurance companies doing business in this state for purposes of conducting examinations. The provision also grants the board the power to summon and examine persons, to revoke or modify certificates of authority issued by it, and to institute suits and prosecutions for violations of Texas insurance laws. The provision does not confer confidentiality on any information obtained or maintained by the board. Therefore it does not except the information requested on this occasion.

Article 21.28-A authorizes the department to take action to rehabilitate the financial condition and management of certain insurers. Section 3A of this article provides that information in the possession of the State Board of Insurance relating to the supervision or conservatorship of any such company by the department is not confidential

unless the commissioner of Insurance determines that confidentiality during the initial period of supervision is necessary to accomplish the purposes of this article.

Ins. Code art. 21.28-A, § 3(a). The commissioner must, however, make this determination on the date the first notice of supervision is given. *Id.* The information may be kept confidential only for the 60-day period following the date of the commissioner's determination. *Id.* Any confidentiality conferred by this provision is therefore only temporary. The department does not assert that this provision protects information obtained pursuant to article 21.28-A beyond the 60-day period. It therefore would not except any of the information that is the subject of this request.

Accordingly, because we find that these provisions do not make requested information confidential, the department may not withhold the information pursuant to section 3(a)(1).

Section 3(a)(12) of the Open Records Act applies to

information contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions, and/or securities, as that term is defined in the Texas Securities Act.

This office has previously determined that insurance companies are financial institutions for purposes of section 3(a)(12). Open Records Decision No. 158 (1977). therefore, examination reports of insurance companies are excepted from disclosure by section 3(a)(12).²

The companies to which the request for information pertains are companies in the Employers of Texas Insurance Group.³ The companies regulated by the department are licensed as either domestic or foreign stock, fire, and casualty insurance companies; one company, now in permanent receivership, was licensed as a domestic mutual fire and casualty company.⁴ The companies are currently or were formerly engaged in the insurance business and thus are "financial institutions" for purposes of section 3(a)(12).

The information at issue here -- interim financial statements and Early Warning System documentation -- may be withheld pursuant to section 3(a)(12) if it

²Examination reports issued on or after December 31, 1990, are available for public inspection pursuant to State Board of Insurance rules.

³These companies include Employers Casualty Company Co., Employers Casualty Group, Employers Indemnity Co., Employers National Insurance Co., Employers National Insurance Corp., Texas Compensation, and Texas Employers Insurance Association. A check of the licensing records of the department discloses that two of these entities, Employers Casualty Group and Employers National Insurance Corporation, are not regulated by the department.

⁴We are advised that Texas Employers Insurance Association was placed in permanent receivership on May 2, 1991. We understand, however, that the request for information regarding this company relates solely to information compiled prior to this event.

is contained in or relates to an examination, operating, or condition report of the insurance companies.⁵ The department's request letter acknowledges that interim financial reports are not specifically mentioned in the Insurance Code, but are required by the department under the general authority conferred by various provisions of the code, including articles 1.15 through 1.19 and article 1.24. The purpose of these reports, the letter states,

is to allow the [department] to monitor the financial condition of certain companies on a regular and systematic basis and to allow our examiners to identify and correct problem areas before they develop rather than waiting for a more comprehensive examination or after the filing of an annual statement.

Article 1.32 of the Insurance Code requires, among other things, that the department identify insurers in hazardous financial condition and take action to rectify the financial condition of such insurers. Section 3 of the article authorizes the board to fix uniform standards and criteria for the early warning of hazardous financial conditions and to fix standards governing the examination of the financial condition of an insurer for such purposes. The Early Warning System is the department's mechanism for determining hazardous financial conditions. The rules establishing the system enumerate conditions which may indicate a hazardous financial condition and specifically provide that "[t]he evaluation of information relating to these conditions is part of the examination process." 28 T.A.C. § 8.1.

The examination of insurance companies is authorized by article 1.15 of the Insurance Code. Section 1 thereof requires the department to examine the financial condition of each insurance carrier organized under the laws of Texas, the ability of the carrier to meet its liabilities, and its compliance with the state laws affecting the conduct of its business. The examination must be conducted each year during the first three years following the carrier's organization or incorporation and once every three years thereafter "*or oftener*, if the Board deems necessary." Ins. Code art. 1.15, § 1 (emphasis added). The board must conduct a similar examination of insurance carriers not organized under the laws of Texas but authorized to do business in this state. *Id.* For purposes of the examination, the board or its commissioned examiners have free access to the books and papers of the carrier or its agents which

⁵If these items are contained in final reports of financial examinations that are open to public inspection by board rule, they are available to the requestor in this instance.


relate to the business and affairs of the carrier, and are authorized to summon and examine any person relative to the affairs of the carrier. *Id.* The failure of an insurance carrier or its agent to "provide information requested as part of an examination" may subject the carrier to disciplinary action by the board. *Id.* § 5. Article 1.24 authorizes the board to make inquiries of any insurance company, insurance agent, or the holder of a certificate, permit, or authorization issued or existing under the Insurance Code regarding

the company's, agent's, or holder's business condition, or any matter connected with its transactions which the Board may deem necessary for the public good or for a proper discharge of its duties.

It is clear from these provisions that the solvency of insurance carriers is a matter of vital interest to the state and that the department is charged with considerable responsibility to monitor the financial condition of insurance carriers and, in the case of carriers in hazardous financial condition, to take corrective action. It is also clear that the information contained in the interim financial statements and Early Warning System documentation is essential to the fulfillment of these statutory duties. We believe the department may require, as part of the examination process under article 1.15, that insurance companies file the interim financial statements. We further conclude that the statements and the Early Warning System documentation constitute information "related to" an examination report within the meaning of section 3(a)(12). Consequently, to the extent these items are not contained in examination reports made public by board rule, they may therefore be withheld from disclosure pursuant to section 3(a)(12).

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling please refer to OR92-575.

Yours very truly,

A handwritten signature in black ink, appearing to read "Steven Aragón", with a stylized flourish at the end.

Steven Aragón
Assistant Attorney General
Opinion Committee

SA/Imm

Ref.: ID# 10605

ID# 11297

ID# 11806

RQ# 21

cc: Mr. Bruce Hight
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